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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 ROBERT DURALL,) CASE NO. C06-1012-MJP-MAT
09)
Petitioner,)
10)
v.) ORDER DENYING PETITIONER'S
11) APPLICATION FOR LEAVE TO
KENNETH QUINN,) PROCEED *IN FORMA PAUPERIS*
12)
Respondent.)
13

14 Petitioner has submitted to this Court for review a petition for writ of habeas corpus under
15 28 U.S.C. § 2254. Petitioner has also submitted an application for leave to proceed with this
16 action *in forma pauperis* ("IFP application") and a motion for appointment of counsel.
17 Petitioner's IFP application, and accompanying documents, reveal that petitioner currently has a
18 spendable balance of over \$1,600 in his prison trust account. These funds are more than adequate
19 to pay the \$5 filing fee for the instant action. Petitioner appears to argue, however, that his IFP
20 application should nonetheless be granted because he currently has outstanding legal financial
21 obligations which far exceed his ability to pay, and because the instant action is likely to require
22 additional fees as the case progresses, including counsel fees. Petitioner notes that he has

01 previously been allowed to proceed *in forma pauperis* in state appellate court proceedings.

02 Pursuant to 28 U.S.C. § 1915(a)(1), a court may authorize the *commencement* of an
03 action, without the prepayment of fees, by a person who establishes that he is unable to pay such
04 fees. Petitioner's documentation clearly establishes that he is financially able to pay the \$5 filing
05 fee to commence this action. Whether petitioner may be deemed financially eligible for
06 appointment of counsel for purposes of 18 U.S.C. 3006A is a separate question, and one which
07 need not be resolved at this time.

08 As noted above, petitioner has submitted a motion for appointment of counsel. There is
09 no right to have counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary
10 hearing is required. *See Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); *Brown v.*
11 *Vasquez*, 952 F.2d 1164, 1168 (9th Cir. 1992); and Rule 8(c) of the Rules Governing Section
12 2254 Cases in the United States District Courts. The Court may exercise its discretion to appoint
13 counsel for a financially eligible individual where the "interests of justice so require." 18 U.S.C.
14 § 3006A. At this juncture, the Court is not satisfied that the interests of justice are best served by
15 appointment of counsel. If the Court later determines that an evidentiary hearing is required, or
16 if petitioner later satisfies the Court that the interests of justice otherwise require the appointment
17 of counsel, petitioner will be given an opportunity to establish that he is financially eligible for such
18 an appointment.

19 Based upon the foregoing, the Court does hereby ORDER as follows:

20 (1) Petitioner's application to proceed *in forma pauperis* is DENIED. Petitioner is
21 directed to pay the \$5 filing fee within ***thirty (30) days*** of the date of this Order. If petitioner fails
22 to timely pay the requisite fee, the action will be dismissed without prejudice.

(2) Petitioner's motion for appointment of counsel is also DENIED.

(3) The Clerk shall direct copies of this Order to petitioner and to the Honorable Mary Alice Theiler.

DATED this 3rd day of August, 2006.



Marsha J. Pechman
United States District Judge

Recommended for Entry
this 2nd day of August, 2006.

s/ Mary Alice Theiler
United States Magistrate Judge